

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Glenny Difo,

Movant,

Criminal Action No.
1:14-cr-00370

v.

Civil Action No.
1:17-cv-01845

United States of America,

Respondent.

Michael L. Brown
United States District Judge

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ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Magistrate Judge's Report and Recommendation ("R&R") (Dkt. 26), recommending that Movant Glenny Difo's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Dkt. 25) be dismissed as untimely and that a certificate of appealability be denied. No party filed objections to the R&R.

Where, as here, no party files objections to the R&R, the Court conducts a review of the record for plain error. *See United States v. Slay*, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curium). After a careful and complete review of the findings and recommendations, the Court finds no error in the Magistrate Judge's recommendation that the Court dismiss

Movant's § 2255 motion as untimely and deny a certificate of appealability.

Movant was sentenced in this matter on December 17, 2014. (Dkts. 9, 10). The Court of Appeals affirmed Movant's conviction and sentence on September 10, 2015. (Dkt. 23). Movant did not file a petition for certiorari with the United States Supreme Court. Dkt. 25 at 2.

Because Movant did not seek certiorari, the Magistrate Judge concluded that Movant's conviction became final on December 9, 2015. *See Clay v. United States*, 537 U.S. 522, 525 (2003). The one-year statute of limitations in which to file Movant's § 2255 motion expired on December 9, 2016. *See* 28 U.S.C. § 2255(f)(1)-(4); *see also Downs v. McNeil*, 520 F.3d 1311, 1318 (11th Cir. 2008).

Movant filed her § 2255 motion on May 10, 2017, and delivered it to prison authorities for mailing on May 11, 2017. Dkt. 25 at 12. The Magistrate Judge found that Movant delivered her § 2255 motion to prison authorities for mailing five months late. Movant did not provide any argument to excuse this untimeliness. Dkt. 26 at 3-4. The Magistrate Judge recommends that the Court dismiss Movant's motion


due to its untimeliness. The Court finds no plain error in this conclusion and dismisses Movant's § 2255 motion as untimely.

The Magistrate Judge further recommends that the Court deny a certificate of appealability because it is not debatable that Movant's § 2255 motion is untimely. The Court finds no plain error in this recommendation and denies a certificate of appealability.

Accordingly, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation (Dkt. 26) and **DISMISSES** Movant's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Dkt. 25) as untimely. The Court further **DENIES** a certificate of appealability.

IT IS SO ORDERED.

Dated: September 26, 2018
Atlanta, Georgia



MICHAEL L. BROWN
UNITED STATES DISTRICT JUDGE